THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

Dated: 08—08—2005

WRIT PETITION NO : 8206 of 2004

Between:

The Deputy Commercial Tax Officer Kakinada Circle, Kakinada, East Godavari District.

..... PETITIONER

AND

Central Bank of India, Main Branch, Raja Rama Mohan Roy Road, Kakinada East Godavari Dist and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 8206 of 2004

ORDER: (per BRSR, J)

The order dated 29-03-2004 made in I.A.No.162 of 2004 in O.A.No.161 of 2003 by the Debts Recovery Tribunal, Visakhapatnam, is impugned in this writ petition filed by the Deputy Commercial Tax Officer, Kakinada.

The Tribunal, at the instance of the first respondent herein, passed orders directing the petitioner herein not to proceed with the sale of items mentioned in the auction notice on 31-03-2004 and further restrained him from proceeding with the auction of the properties mentioned in the auction notice till disposal of M.A.No.86 of 2004 on the file of the Debts Recovery Appellate Tribunal, Chennai.

It is brought to our notice that the petitioner herein initiated proceedings against the third respondent herein for realization of arrears of commercial tax and accordingly, proposed to put the properties to public auction in respect of which, the first respondent-bank had also initiated proceedings against the third respondent.

Learned special Standing Counsel for the Department,
inter-alia, contended that the petitioner-Deputy Commercial Tax Officer, Kakinada, is not impleaded as one of the party respondents either in O.A.No.161 of 2003 or in the appeal stated to be pending before the Debts Recovery Appellate Tribunal, Chennai.

The short submission is that in the absence of the petitioner being impleaded

as party-respondent either in the O.A. or in the appeal, no such orders could have been passed by the Debts Recovery Tribunal restraining the statutory authority from discharging its statutory duties under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act"). There is no dispute whatsoever that the Deputy Commercial Tax Officer, Kakinada, is not impleaded as party-respondent neither in the O.A. nor in the appeal. The Tribunal is having limited jurisdiction conferred with functions to adjudicate the issues within the framework of the provisions of the Act. The impugned order is not in the nature of a garnishee order, but has the effect of restraining the statutory authority from discharging its duties. In the circumstances, we are unable to sustain the impugned order passed by the Tribunal.

However, this order shall not preclude the first respondent-Central bank to file an appropriate application to implead the petitioner-Deputy Commercial Tax Officer, Kakinada, as one of the party-respondents and then, seek for appropriate orders, if they are so advised, which shall be considered by the Tribunal in accordance with law.

Learned counsel for the first respondent – Central Bank, however, states that the liability of the third respondent to pay the arrears of sales tax is only Rs.11,66,397/- whereas the bank has to realize more than one crore twenty lakhs from the third respondent herein and therefore, the whole of the property cannot be permitted to be auctioned by the petitioner-Deputy Commercial Tax Officer. This contention can as well be urged before the Tribunal and the Tribunal shall pass appropriate equitable orders in the circumstances of the case.

The writ petition is accordingly disposed of without any order as to costs.

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(B.SUDERSHAN REDDY, J)

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(RAMESH RANGANATHAN, J)

8th AUGUST, 2005.

Note: furnish copy of the order

within one week.

B/o

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